

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Assessment and Collection of Regulatory)	MD Docket No. 07-81
Fees for Fiscal Year 2007)	

**REPLY COMMENTS OF THE
VOICE ON THE NET (VON) COALITION**

1. Introduction

The VON Coalition’ appreciates the opportunity to file these reply comments pertaining to the Federal Communications Commission (“Commission” or “FCC”) Notice of Proposed Rulemaking that seeks to extend annual regulatory fees for Fiscal Year (“FY”) 2007 to interconnected voice over Internet Protocol (“VoIP”) services.² Other initial comments filed lend solid support to the VON Coalition’s arguments that the Commission’s proposal is both legally and procedurally deficient.³ In addition to the legal infirmities already presented, these reply comments detail how the Commission’s proposal would run counter to the recently enacted Call Home Act as well. Many commenters also have advocated that if the Commission

¹ The Voice on the Net or VON Coalition consists of leading VoIP companies, on the cutting edge of developing and delivering voice innovations over Internet including AccessLine, BMX, BT Americas, CallSmart, Cisco, Convedia, Covad, EarthLink, Google, iBasis, i3 Voice and Data, Intel, Microsoft, New Global Telecom, Openwave, Pandora Networks, PointOne, Pulver.com, Skype, Switch Business Solutions, T-Mobile USA, United Online, USA Datanet, VocalData, Veraz Networks, and Yahoo!

² *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, Notice of Proposed Rulemaking, MD Docket No. 07-81, FCC 07-55, ¶ 10 (rel. Apr. 18, 2007) (“NPRM”).

³ See, e.g., Comments of the Wireless Communications Association International (“WCA Comments”) at 3-7 (discussing the many infirmities of the Commission’s proposal).

proceeds with its proposal to extend annual regulatory fees to interconnected VoIP services despite these shortcomings, the Commission should do so on the basis of in-use North American Numbering Plan (“NANP”) numbers or connections and refrain from extending a revenues-based approach to imposing regulatory fees onto interconnected VoIP providers.⁴ Although the VON Coalition has shown that annual regulatory fees should not be extended to interconnected VoIP, if the Commission moves forward with its proposal, it should do so only on ~~an~~ in-use NANP numbers- or connections-based basis.

11. Assessment of Regulatory Fees on Interconnected VoIP Providers Increases the Costs of Calling Home For Armed Forces in Violation of the Call Home Act

Thus far, the Commission has applied a series of regulations on VoIP providers in an effort to meet its public interest obligations of protecting the safety and welfare of consumers. However, the Commission has wisely refrained from applying economic regulation to new and innovative broadband applications and services. The proposal to extend the regulatory fees to VoIP, however, appears to reverse this course and runs counter to the Chairman and Administration’s stated broadband policy goals.⁵ Raising rates on U.S. broadband applications

⁴ See, e.g., Comments of Comcast Corp. (“Comcast Comments”) at 2 (recommending a fee structure based upon actual subscribers); Comments of Nuvio Corp. (“Nuvio Comments”) at 3-4 (discussing the use of numbering resources by interconnected VoIP customers); Comments of the Iowa Utilities Board at 2-3 (discussing the need to assess any regulatory fee on VoIP on the basis of numbers used due to the proliferation of free VoIP services utilizing numbering resources).

⁵ See Promoting Innovation and Competitiveness, President Bush’s Technology Agenda: A New Generation of American Innovation (Mar. 26, 2004) *available at* http://www.whitehouse.gov/infocus/technology/economic_policy200404/chap4.html (The “Administration has a record of comprehensive and demonstrably effective broadband initiatives that are creating ~~an~~ economic and regulatory climate in which broadband can flourish. . . . Developing the most competitive broadband market in the world will provide American consumers with the most affordable and highest quality broadband service in the world.”); *see also* Remarks by Chairman Kevin J. Martin To the NARUC Summer Meeting (July 26, 2005) (With respect to VoIP: “...I believe that new

and users, as these fees would invariably do, does not just impede America's ability to regain our leadership in international broadband rankings, it also threatens to increase the cost to our troops serving around *the* globe of communicating with their families and loved ones.

Members of our nation's military, from *the* Department of Defense's central command to the troops on the ground in Iraq, Afghanistan, and elsewhere, are enjoying widespread use of VoIP to affordably stay in touch with families and loves ones while keeping America safe. Utilizing VoIP, troops can now participate in weddings, visit with newborns, and participate in family events. Because of the benefits of VoIP, a soldier no longer has to choose between serving their families and serving their country. After using VoIP, one Army General recently observed that efforts to connect troops and families using VoIP represent the single greatest boost in morale for the troops in the past 25 years.⁶

It is precisely for these reasons that Congress recently passed the Call Home Act of 2006 – to ensure that armed forces personnel serving oversea are able to affordably call home.⁷ Under *the* Call Home Act, the Commission “shall take such action as may be necessary to reduce the cost of calling home for Armed Forces,” including by evaluating “methods of reducing the rates imposed on such calls, including deployment of new technology such as Voice over Internet Protocol or other Internet protocol technology” including through the “the reduction of such costs through the waiver of government fees, assessments, or other charges for such calls.”⁸

technologies and services should operate free of economic regulation..”) *available at* <http://hraunfoss.fcc.gov/edocspublic/attachmatch/DOC-2603A1.pdf>.

⁶ Source: Freedom Calls Foundation. For more information about the Freedom Calls Foundation and the use of VoIP by soldiers, see <http://www.freedomcalls.org/>.

⁷ See The Call Home Act of 2006, P.L. 109-459, 47 U.S.C. §§ 201,609 (note) (2006) *available at* http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_public_laws&docid=f:publ459.109.pdf.

⁸ See *id.* §§ 2(a), 2(b)(2).

Therefore, even if the Commission were to ultimately conclude that it has the authority to apply its regulatory fees to interconnected VoIP providers pursuant to Section 9, the Commission should not act as proposed, which would raise fees on armed forces personnel stationed overseas in violation of the Call Home Act.

Moreover, an exception for calls from armed forces personnel would not be economically practical or technologically feasible. Any requirement that VoIP providers separate VoIP services used to communicate with Armed Forces personnel stationed or deployed outside the United States would prove unworkable. In many cases, service members take an interconnected VoIP service with them overseas using a local phone number while maintaining his/her U.S. billing address. Unlike legacy phones, a nomadic interconnected VoIP service has the advantage of letting a service member communicate with loved ones using a local number as if it were a local call. This allows for constant connection despite possible relocations of personnel and reduced costs for families calling their loved ones in the military. Because it is often impossible to determine which VoIP users have taken their phones with them (as the Commission found in its *Vonage Jurisdictional Order*): any regulatory fee increase applied to interconnected VoIP users would necessarily also be applied to armed forces personnel serving overseas in contradiction of the Call Home Act. In addition, because regulatory fees are based on last year's services (and it is impossible to know which of last year's calls involved service members), interconnected VoIP providers likely would have to recover fees from its entire subscriber base – even those serving overseas.

⁹ See *In Re Vonage Holdings Corp. Petition for Declaratory Ruling Concerning An Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 19 FCC Rcd 22404 (2004) (“*Vonage Jurisdictional Order*”).

Chairman Martin and Commissioners Copps, Adelstein, Tate, and McDowell all said in their Joint Statement in January 2007 regarding the Commission's implementing the Call Home Act that they are "committed to taking any action we can to help keep our military families connected with friends and family at home." Imposing new regulatory fees on interconnected VoIP providers will prevent the Commission from following through on its commitment to ensure that the Commission does not add to the cost of keeping in touch with our troops around the globe.

111. If the Commission Moves Forward With Its Proposal to Extend Annual Regulatory Fees to VoIP Despite Serious Legal Infirmities, Any Extension of Those Fees Should Be Based on In-Use NANP Numbers and/or Connections

At the outset, the VON Coalition agrees with the comments filed by the Wireless Communications Association International ("WCA") regarding the Commission's lack of authority to impose annual regulatory fees on interconnected VoIP providers." For instance, we agree with WCA's assertion that the Commission cannot reasonably base its authority to extend regulatory fees to VoIP on the mere fact that there are now Universal Service contribution requirements on interconnected VoIP providers pursuant to the Commission's "permissive authority" under Section 254(d).¹²

The VON Coalition also agrees with WCA and Comcast that the NPRM provides insufficient information regarding the proposed amount of annual regulatory fees for VoIP, its

¹⁰ *See Implementation of the Call Home Act of 2006*, Joint Statement of Chairman Kevin J. Martin, Commissioner Michael J. Copps, Commissioner Jonathan S. Adelstein, Commissioner Deborah Taylor Tate, and Commissioner Robert M. McDowell, 22 FCC Rcd 1030 (2007). In the accompanying Order, the Commission decided, as a first step, to forbear from applying USF and TRS contributions requirements on calls placed by Armed Forces personnel stationed or deployed outside the United States to their families or friends at home. *Id.* at 1.

¹¹ *See* WCA Comments at 3-5.

¹² *Id.* at 4.

analysis of that amount, or its collection methodology for VoIP providers offering VoIP services bundled with other services. Because of these infirmities, the NPRM is fatally defective in terms of extending annual regulatory fees to VoIP.¹³ As WCA observes, in addition to containing no indication whatsoever of what the interconnected VoIP annual regulatory fee would be, the NPRM contains no analysis of either the regulatory costs caused by interconnected VoIP providers or how any regulatory fee should be adjusted (presumably significantly downward) given the benefits (or lack thereof) of federal regulation to interconnected VoIP providers.¹⁴ And, Comcast raised valid concerns about the NPRM's lack of guidance regarding how interconnected VoIP service providers may reasonably and fairly calculate annual fees when bundled services are involved.¹⁵

If the Commission moves forward despite these very serious impediments, however, it should adopt an in-use NANP numbers and/or connections-based system as opposed to a revenues-based approach. The VON Coalition has long stated that the existing regulatory framework does not fit and should not be applied to VoIP services. Therefore, to the extent that the Commission proceeds to apply regulatory fees to interconnected VoIP services, it should not apply the old revenues-based approach and it should appropriately tailor its numbers-based approach for this new service.

¹³ See *id.* at 6-7 (noting that the NPRM lacks a specific proposal for VoIP annual regulatory fees and does not relate that fee to VoIP provider benefits or apply Section 9 cost factors to the proposed fees).

¹⁴ *Id.* at 5.

¹⁵ See Comcast Comments at 1-2.

Implementing annual regulatory fees for interconnected VoIP providers using active, in-use numbers¹⁶ and/or connections would be consistent with current proposals for Universal Service Fund contribution reform that are rapidly gaining momentum. Moreover, in the context of Universal Service contributions, the VON Coalition is a member of the USF By the Numbers Coalition¹⁷ and has long been a supporter of transitioning from a revenues-based collection model to a numbers- and/or connections-based methodology.”

The use of a numbers- and/or connections-based methodology to calculate annual regulatory fees for interconnected VoIP providers would have several significant benefits over a revenues-based regime, including:

- Competitive Neutrality: a numbers/connections-based methodology would ensure that regulatory fees are collected regardless of the technology used to deliver services. It would also help to provide regulatory certainty needed for the development and deployment of innovative technologies incorporating voice features.
- Sustainability: a numbers/connections-based methodology would overcome problems associated with revenues-based assessments in a time when innovative converged/bundled services are proliferating.
- Ease of Administration: use of a flat fee based on numbers/connections eliminates the need to track and segregate various types of revenues in order to calculate appropriate fees and reduces the ability to “game the system.” It would also be easier for end-users to understand.
- Efficiency: use of a flat fee regulatory fee system would minimize the unnecessary consumption of numbering resources and the administrative burdens impose on both regulators and consumers when number exhaust issues arise.

¹⁶ To clarify, were such a fee to be adopted, it should only apply to active NANP numbers actually in use by subscribers and **not** on numbers merely assigned to an interconnected VoIP provider.

¹⁷ Other members of the USF by the Numbers Coalition include AT&T, CTIA-The Wireless Association, DSL.Net, GCI, IDT, NCTA, USTelecom, and Verizon.

¹⁸ See *Federal-State Joint Board on Universal Service*, Reply Comments of the VON Coalition, CC Docket No. 96-45 (filed May 13, 2002).

In its initial comments, the Iowa Utilities Board agreed that the use of a numbers-based approach would help to optimize the efficient use of numbering resources.¹⁹ Comcast agreed both regarding the need for technological neutrality in imposing any annual regulatory fees on interconnected VoIP providers and regarding the fact that a subscriber based approach would be more adaptive to the future of the marketplace?’ Also, as Comcast noted well in its comments:

Use of a subscriber-based approach would eliminate the need for providers to apportion telecommunications revenues based on whether they are interstate or intrastate, and to distinguish between telecommunications and non-telecommunications services. In addition, a subscriber-based approach would be better able to adapt to future changes in the marketplace.”

There is no merit whatsoever to the comments of the National Telecommunications Cooperative Association (“NTCA”) that the Commission must adopt a revenues-based approach in order to be consistent with its use of revenues to calculate interconnected VoIP provider USF contributions.²² The Commission imposed revenues-based USF contributions requirements on interconnected VoIP providers clearly and undeniably as an “interim” measure on the path to comprehensive Universal Service reform. Indeed, use of a numbers/connections based approach would potentially be a welcomed “first step” and could act as a valuable “test bed” for the Commission on the path to long-overdue comprehensive Universal Service reform.

When considering the particulars of extending annual regulatory fees to interconnected VoIP providers on in-use NANP numbers- and/or connections-based basis, however, as both The VON Coalition and Comcast note, the Commission should not merely extend to interconnected VoIP providers the same fee as is currently levied on CMRS providers who currently pay annual

¹⁹ See Comments of the Iowa Utilities Board at 1-2.

²⁰ See Comcast Comments at 1-2.

²¹ See *id.*

²² See NTCA Comments at 2.

regulatory fees based on numbers.²³ The Commission is required by law to analyze and connect annual regulatory fees to the "benefits" of regulation enjoyed by a group of regulatees and the regulatory costs caused by those regulatees. Interconnected **VoIP** providers do not enjoy equivalent regulatory benefits as others currently paying annual regulatory fees, and they do not cause equivalent costs.²⁴ Accordingly, any regulatory fee imposed on interconnected **VoIP** should be significantly less than the fee imposed on CMRS providers.

IV. Conclusion

For the foregoing reasons, in addition to our initial comments submitted in the above-captioned proceeding, the **VON** Coalition respectfully requests that the Commission refrain from imposing annual regulatory fees on interconnected **VoIP** providers. However, if the Commission insists upon extending regulatory fees requirements to interconnected VoIP providers at this time, it should do so only based on in-use NANP numbers and/or connections and not based on revenues.

Respectfully submitted,

THE VON COALITION

By: /s/ Staci L. Pies
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²³ See **VON** Coalition Comments at 17; Comcast Comments at 1-2.

²⁴ See **VON** Coalition Comments at 14-17.